

SECURITIES AND EXCHANGE COMMISSION
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March 30, 2023

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments of the Investment Management Procedures.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2023, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to modify its Investment Management Procedures³ (the “Investment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules and the Investment Management Procedures.

Management Procedures” or the “Procedures”) to change the maximum maturities for certain investments made with amounts held by the Clearing House as regulatory capital.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend the Investment Management Procedures in the Table of Authorised Investments and Concentration Limits for ICEU’s Regulatory Capital (the “Table”) to change the maximum maturity of certain investments in sovereign and government agency bonds. In particular, the maximum maturity on the purchase of US Sovereign Bonds, UK Sovereign Bonds, EU Sovereign Bonds, US Government Agency Bonds, UK Government Agency Bonds, and EU Government Agency Bonds would be amended from 90 days to 13 months. The amendments would align the maximum maturity for such investments with the existing maximum maturity for permitted investments in the same instrument that are made with cash provided by Clearing Members (“CMs”) (e.g., as margin or guaranty fund contribution) and the Clearing House’s own contribution to the guaranty fund. By extending the maximum

maturity, ICE Clear Europe would have the flexibility to invest its regulatory capital in longer term sovereign and government bonds. ICE Clear Europe believes that such flexibility is important in light of current and expected market conditions, including to assist ICE Clear Europe in avoiding having to invest or reinvest in shorter duration instruments during potential periods of market volatility, such as those that may arise in connection with U.S. debt ceiling developments.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Investment Management Procedures are consistent with the requirements of Section 17A of the Act⁴ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁵ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the Investment Management Procedures are designed to align the maximum maturity for certain investments made with ICE Clear Europe's regulatory capital with the maximum maturity for investments of other funds by the Clearing House (specifically, cash provided by Clearing Members and the Clearing House's own contribution to the guaranty fund). Although regulatory capital serves a

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

different purpose from default resources, ICE Clear Europe believes that the same principles of capital preservation and maintaining high levels of liquidity are appropriate for all cash managed by the Clearing House. The current maximum maturities for investments in sovereign and government bonds for regulatory capital creates an unnecessary limitation compared to Clearing Member cash and the Clearing House guaranty fund contributions. The current limitation may subject regulatory capital investments to short-term volatility and reinvestment risk that could be avoided in appropriate cases through having the flexibility to invest in longer dated, but still high quality and liquid, instruments. ICE Clear Europe does not believe it is necessary for the maximum maturity for investments of its regulatory capital to be more restrictive than for its other investments of cash. ICE Clear Europe believes that, as with investments of Clearing Member cash and Clearing House guaranty fund contributions, investments in qualifying sovereign and agency bonds with an up-to 13 month maturity would nonetheless have acceptable credit, market and liquidity risks that can be managed by the Clearing House. Moreover, the Clearing House would then have the same tools and ability to manage its regulatory capital as it would its CM cash and Clearing House guaranty fund contributions. (In addition, the general investment consideration under the existing Procedures that investments have a variety of maturity dates would continue to apply.) Having a consistent set of investment and maturity requirements would also simplify the Clearing House investment process. Accordingly, ICE Clear Europe believes that the Investment Management Procedures, as amended, are consistent with the safeguarding of funds and securities in the custody or control of the clearing agency or for which it is responsible. For the same reasons, the amendments are also consistent

with the protection of investors and the public interest. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁶

Rule 17A-22(e)(16) requires a covered clearing agency to “establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] safeguard its own and its participants’ assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.”⁷ As discussed above, the amendments to the Investment Management Procedures are intended to align the maximum maturities for certain investments made with ICE Clear Europe’s own regulatory capital with the maximum maturities for investments in the same assets when made with Clearing Member cash or the Clearing House’s own contribution to the guaranty fund. ICE Clear Europe does not believe it is necessary to distinguish between the two types of investments in terms of maximum maturity. As revised, the Procedures will limit investment of Clearing House cash of all varieties to instruments with minimal credit, market and liquidity risks, consistent with the manner in which Clearing Member cash and Clearing House guaranty fund contributions are currently invested. As such, the revised Investment Management Procedures would continue to help enable the Clearing

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22(e)(16).

House to safeguard such assets and minimize the risk of loss and delay in access to such assets, consistent with the requirements of Rule 17Ad-22(e)(16).⁸

Rule 17Ad-22(e)(15) requires a covered clearing agency to “establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [...] hold liquid net assets funded by equity [...] which [...] shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.”⁹ As set forth above, ICE Clear Europe believes the revisions to the maximum maturity for investments of its own capital will result in investments in assets with minimal credit, market and liquidity risks, consistent with other investments made by the Clearing House. The current investment profile is conservative, allowing for investment only in the highest rated securities, and this would not be affected by the proposed changes. For similar reasons, ICE Clear Europe believes that under the revised Investment Management Procedures, such investments of its capital will be of sufficient high quality and liquidity to permit the Clearing House to meet its operating expenses,

⁸ 17 CFR 240.17Ad-22(e)(16).

⁹ 17 CFR 240.17Ad-22(e)(15)(B).

even in adverse market conditions. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(15).¹⁰

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Investment Management Procedures to align maturity requirements for investment of the Clearing House's capital. The amendments are not intended to impose new requirements on Clearing Members, and will not affect the investment of cash provided by Clearing Members. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule

¹⁰ 17 CFR 240.17Ad-22(e)(15)(B).

change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ICEEU-2023-009 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2023-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, that are

filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2023-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,
Assistant Secretary.

¹¹ 17 CFR 200.30-3(a)(12).